



Unlawful Coercion

Coercion in the building and construction industry is unlawful under the *Building and Construction Industry Improvement Act (BCII Act)* and the *Fair Work Act 2009 (FW Act)*.

Persons or organisations who engage in unlawful coercion can be prosecuted.

WHAT IS COERCION?

Coercion is the act of applying pressure to force a party to cause them to do, or not do, a certain thing or to make a particular decision. Coercion interferes with a person's freedom of choice.

There are specific laws in relation to coercion that apply to aspects of the building and construction industry.

HIRING BUILDING CONTRACTORS OR EMPLOYEES

It is illegal to organise or take action, or threaten to take action, in order to coerce a person to:

- employ or not employ a person as a building employee
- engage or not engage a person as a building contractor
- allocate or not allocate particular responsibilities to a building employee or contractor or designate particular duties to a building employee or contractor.

For example, it would be considered unlawful coercion for a union to threaten industrial action unless a builder employed a particular shop steward on a work site.

AGREEMENT MAKING

Persons are entitled to make, vary, extend or terminate an agreement. It is illegal to coerce or apply undue pressure to influence a person's decision on these matters. The coercion or undue pressure may be for the purpose of influencing a person to either make a decision or not make a decision.

MEMBERSHIP OF UNIONS AND INDUSTRIAL ASSOCIATIONS

It is illegal:

- to take adverse action against another person because the other person is or is not, or was or was not, an officer or member of an industrial association
- for an employer to induce an employee to become or not become, or remain or cease to be, an officer or member of a union
- during discussions for a proposed building agreement for an employer to coerce or apply undue pressure to an employee to make, or withdraw, a request for union representation.

SUPERANNUATION SCHEME

It is illegal for a person to take or refrain from taking action, or threaten to do so, with the intent of coercing a person to use a particular superannuation fund or scheme for superannuation contributions.

WHAT PENALTIES MAY BE IMPOSED FOR UNLAWFUL COERCION?

If the Federal Court finds that unlawful coercion has occurred then it may:

- impose a penalty
- grant an injunction
- require compensation to be paid to a person damaged by the breach or make any other appropriate order.

The maximum penalties are:

- up to \$22,000 for individuals and up to \$110,000 for a body corporate per breach of the BCII Act
- up to \$6600 for individuals and up to \$33,000 for a body corporate per breach of the FW Act.

The maximum penalty amounts do not apply to compensation.

SOME OTHER GENERAL COERCION OFFENCES UNDER THE FW ACT

It is illegal for a union official or member to organise or take action, or threaten or encourage such, with the intent of coercing an employer to:

- become or not become an officer or member of a union
- take action that would contravene freedom of association laws
- prejudice an employee because they failed to comply with a direction given by the union.

It is illegal for a union official or member to take or refrain from taking action, or threaten to do so, with the intent of coercing a person to:

- join in industrial action
- discriminate against an independent contractor in relation to union membership
- pay a bargaining services fee.

FURTHER INFORMATION

Fact sheets and other reference material is available from the ABCC:

- Hotline: 1800 003 338
- Website: www.abcc.gov.au

Please note: The Australian Government has proposed changes to the building industry legislation. The contents of this fact sheet will apply until the BCII Act is amended.



Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

1800 003 338
abcc.gov.au